Supreme Court, U.S.
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No. 04-1113

IN THE

Supreme Court of the United States

JOHN and THERESA SOPHOCLEUS,

Petitioners,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, MARGIE CHAMPION TODD, PAUL BOWLIN, JIMMY BUTTS, DEJARVIS LEONARD, REESE & HOWELL, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT REESE & HOWELL, INC.

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Reese & Howell, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Respondent Reese & Howell, Inc. acknowledges that this Court recently refined what has become known as the "Rooker-Feldman Doctrine" in its opinion in *Exxon Mobil Corp. v. Saudi Basic Ind. Corp.*, __ U.S. __ (2005). That doctrine, derived from this Court's opinions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1982), gives effect to this Court's exclusive appellate jurisdiction over state courts established by 28 U.S.C. § 1257. In *Exxon Mobil*, this Court recognized that "the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts and superceding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." * at 8, 9. This case does not present an example of the unduly broad application of Rooker-Feldman. Rather, it involves nothing more than a straightforward application of the doctrine to prevent an unsuccessful state court litigant from "inviting district court review and rejection" of a state court judgment. *Id.* at * 10.

The subject of the Sophocleuses' Petition for Writ of Certiorari is a judgment of dismissal granted for Respondents Reese & Howell and the State of Alabama by the United States District Court for the Middle District of Alabama, and affirmed by the United States Court of Appeals for the Eleventh Circuit. Those Courts determined that the District Court had no jurisdiction to entertain the Sophocleuses' suit because to do so, the District Court would be required to decide whether an Alabama state court had improperly decided a condemnation dispute in which the state court

found a "public use" of the Petitioners' property, a decision which the Petitioners now want the federal courts to overturn.

The determination that this case was to be dismissed was a correct application of the Rooker-Feldman doctrine as outlined in *Exxon Mobil*. At the time the Sophocleuses filed their federal lawsuit, a final and non-appealable judgment already existed in Alabama state court finding that the condemnation of the Sophocleuses' property was for a valid, public use. The Sophocleuses filed the federal court action asking the federal court to overturn the state court and rule that the taking was in fact for a private use.

REASON FOR DENYING THE PETITION

On August 3, 1998, the Probate Court of Lee County, Alabama, issued a Decree of Condemnation condemning six tracts of land, one of which was owned by the Sophocleuses, for use as a right of way for the construction and maintenance of an expansion of U.S. Highway 280. In its decree, the Probate Court found the taking necessary for public use and awarded $253,400 to the landowners as compensation, $85,000 of which went to the Sophocleuses. The State of Alabama deposited with the Court the full amount of the $253,400 condemnation award and gave the Sophocleuses a 30 day notice to vacate the premises in accordance with Alabama law. Pursuant to Alabama law, the Sophocleuses and one other landowner appealed the condemnation order to the Circuit Court of Lee County.

In response to a Request for Admission served on the Sophocleuses in the state circuit court proceedings, the Sophocleuses admitted that the taking of their property was for public use, but claimed that the taking was not necessary.

In an affidavit filed in the state court condemnation proceeding, the Sophocleuses claimed that the State had taken the property for private use based on the allegation that the state failed to immediately destroy their home following the condemnation decree. They also contested the amount of compensation paid to them.

In accordance with Alabama law, the State of Alabama initiated eviction proceedings against the Sophocleuses in the state district court and that court issued a writ of possession. The Sophocleuses did not appeal that judgment.

The Sophocleuses ultimately settled the appeal of their condemnation case with the State of Alabama and obtained an additional $60,000 in compensation. On September 23, 1999, the Circuit Court of Lee County entered an Order and Decree of Condemnation again finding a public use and reflecting that the Sophocleuses and the State had settled the condemnation proceeding for a total compensation payment to the Sophocleuses of $145,000.

Six months after settling the condemnation case, in which the state court found the need for a public use taking, the Sophocleuses filed this action in federal court against the State of Alabama Department of Transportation, various Department of Transportation officials, a Federal Relocation Officer, and Reese & Howell, which served as the state's general contractor on the highway expansion project. The Sophocleuses amended their federal complaint on three separate occasions, and ultimately alleged claims of conspiracy, trespass, invasion of privacy and outrage against the remaining defendants based upon their assertion that the state had not taken their property "for the public good . . . but . . . for the private use of the contractors, Reese & Howell . . ."

On January 26, 2004, United States District Judge Myron H. Thompson entered an order dismissing the Sophocleuses' claims against Reese & Howell and the other defendants, applying the Rooker-Feldman doctrine. Judge Thompson determined that all of the allegations made by the Sophocleuses in their federal court lawsuit were "inextricably intertwined" with the judgment entered by the Alabama state court, in which the state court held that the condemnation of the Sophocleuses' property had been for an appropriate, public use. Judge Thompson correctly decided that the Sophocleuses could only be successful if the federal court determined "that the state court was wrong" in finding a public use:

> If the Sophocleuses were to prevail in this case by convincing this Court that the taking of their land was for a private use from January to August 1999, and were to win damages based on that claim, that would mean that the state court was wrong in concluding (1) that the condemnation was necessary and for a public use, and (2) that the compensation the Sophocleuses received was adequate.

Sophocleus v. Alabama Department of Transportation, 305 F. Supp. 2d 1238, 1247 (M.D. Ala. 2004).

On August 2, 2004, a three judge panel of the United States Court of Appeals for the Eleventh Circuit affirmed the District Court in a *per curiam* unpublished opinion.[1]

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[1] Eleventh Circuit Rule 2 supplementing Federal R. App. P. 36 provides that "[u]npublished opinions are not considered binding precedent. They may be cited as persuasive authority . . ."

In that Opinion, the Eleventh Circuit stated that the District Court had correctly found the Sophocleuses' claims to have been improperly filed in federal court and therefore, the Rooker-Feldman doctrine deprived the federal courts of jurisdiction over the Sophocleuses' claims. After filing their Petition for Writ of Certiorari to this Court, the Sophocleuses filed another lawsuit in Alabama state court against Reese & Howell making the same allegations as those in the now-dismissed federal court lawsuit.

This Court recognized in *Feldman* that federal circuit and district courts do not have jurisdiction to revisit a matter directly settled in prior state court litigation, and that those federal courts are also without jurisdiction to entertain a lawsuit which has at its heart, claims which are "inextricably intertwined" with the decision in a prior state court proceeding.

In his concurring opinion in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987), Justice Marshall described the appropriate standard to be followed in determining whether a federal court claim is "inextricably intertwined" with the previously-decided issues in an antecedent state court proceeding:

> It is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues presented to it.
>
> Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in

> substance, anything other than a prohibited appeal of the state-court judgment.

In order to have prevailed in their federal court lawsuit, the Sophocleuses would have to successfully prove "that the state court wrongly decided the issues presented to it." Their claims could only prevail if "the state court was wrong." That is precisely the situation to which this Court applied the Rooker-Feldman doctrine as stated in *Exxon Mobil*:

> The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: Cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobile Corp. v. Saudi Basic Ind. Corp., *supra* at 10.

The Sophocleuses attempt to state their claim in such a way as to circumvent the application of the Rooker-Feldman doctrine. The Sophocleuses do so by stating that the only issue in the state court condemnation proceeding was valuation. In that proceeding, the Sophocleuses attacked the State's right to condemn their property, and also raised the allegedly improper use of their property by Reese & Howell as the State's contractor for the highway expansion. The United States District Court for the Middle District of Alabama correctly held that under Rooker-Feldman the Sophocleuses could not recast these same claims in the form of a lawsuit for additional compensation for the period of

time that the Sophocleuses contend their property was used for private rather than public purposes. The United States Court of Appeals for the Eleventh Circuit properly affirmed that application of Rooker-Feldman on appeal.

The Sophocleuses were permitted to fully pursue in state court their claim that their property had not been validly taken for a public use, and they did so. Consequently, their subsequent federal lawsuit was properly dismissed through application of the Rooker-Feldman Doctrine.

The prior opinions of this Court which the Sophocleuses claim warrant granting of their Petition for Writ of Certiorari do not support their position. Both *Cincinnati v. Vester*, 281 U.S. 439 (1930) and *Thompson v. Consolidated Gas Corp.*, 300 U.S. 55 (1937) involved only federal court litigation. There had been no prior state proceedings relating to the subject matter of those federal court actions. *County of Allegheny v. Mashuda*, 360 U.S. 185 (1959), involved the same sort of situation to which this Court recently held in *Exxon Mobil* that Rooker-Feldman did not apply, *i.e.*, one in which a federal lawsuit is commenced while a state court lawsuit embracing the same subject is then pending. Unlike the respondents in *County of Allegheny v. Mashuda*, the Sophocleuses had already contended unsuccessfully in state court that the taking of their property had been for private use before their federal court lawsuit was filed. Rather than pursuing the state court action through the appeals process and perhaps ultimately to this Court, the Sophocleuses folded their tent, settled the state court litigation, then sought to undo it in federal court. That is

precisely the situation to which the Rooker-Feldman doctrine applies.[2]

CONCLUSION

As discussed in the preceding section of this Brief, the decision of the United States Court of Appeals for the Eleventh Circuit was a correct application of the Rooker-Feldman doctrine. Accordingly, this Court should deny the Sophocleuses' Petition for a Writ of Certiorari.

Respectfully submitted,

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[2] Interestingly, Mr. Justice Clark's dissent in *Court of Allegheny v. Mashuda*, characterizes the respondents' claim that their property was taken for private use as "obviously frivolous". *Id.* at 200, n. 1. The respondents had claimed that the state had abandoned its public taking of a portion of condemned property by leasing it to its contractor for use for "storage and concentration of supplies of the contractor in the performance of his duties under the contract with the . . . [respondents] for the improvement and enlargement of the Greater Pittsburgh Airport." The Sophocleuses' claim of wrongful private taking of their home by the State of Alabama in this case is based upon strikingly similar grounds. Specifically, at page eight of their Petition, the Sophocleuses contend that the state wrongfully allowed the temporary use of their home by Reese & Howell for sleeping quarters and an office in connection with the highway expansion project.